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IRVING JACOBS (1910-1986)

July 1, 2019

**VIA HAND DELIVERY**

**Accepted / Filed**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Portals II, Filing Center, TW-A325  
Washington, D.C. 20554

**JUL -1 2019**

Federal Communications Commission  
Office of the Secretary

**Re: Patrick Sullivan and Lake Broadcasting, Inc.  
EB Docket No. 14-82**

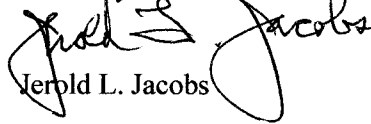
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Dear Ms. Dortch:

Enclosed for filing, on behalf of our client, Patrick Sullivan and Lake Broadcasting, Inc., is an original copy of the "Exceptions and Brief" that they filed electronically in ECFS this afternoon.

Please direct any communications or inquiries concerning this matter to the undersigned.

Sincerely

  
Jerold L. Jacobs

Enclosure

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 ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Accepted / Filed

JUL - 1 2019

Federal Communications Commission  
Office of the Secretary

In the Matter of ) EB Docket No. 14-82  
)  
**PATRICK SULLIVAN** ) FRN 0003749041, 0006119796,  
(Assignor) ) 0006149843, 0017196064  
)  
and ) Facility ID No. 146162  
)  
**LAKE BROADCASTING, INC.** ) File No BALFT-20120523ABY  
(Assignee) )  
)  
Application for Consent to Assignment of )  
License of FM Translator Statin W238CE, )  
Montgomery, Alabama )

To: Marlene H. Dortch, Secretary  
Attention: The Commission

**EXCEPTIONS AND BRIEF OF PATRICK SULLIVAN**  
**and LAKE BROADCASTING, INC.**

Jerold L. Jacobs

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1629 K Street, N.W. Suite 300  
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Its Attorney

Dated: July 1, 2019

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## SUMMARY

The Hearing Designation Order (“HDO”) in this proceeding established the “law of the case,” making it clear that the purpose of the proceeding was to determine whether Mr. Michael Rice “has been sufficiently rehabilitated and, therefore, is qualified to hold the Station’s license”. The ALJ recognized this fact in Paragraph 5 of the subject Initial Decision (“ID”). As part of this “law of the case,” the *HDO* further stated that “the Presiding Administrative Law Judge shall not...relitigate any of the findings of fact and/or conclusions of law contained in any order or opinion relating to the state court proceeding in which Michael S. Rice was determined to be a convicted felon or in any order or opinion relating to the Commission proceeding in which Michael S. Rice and/or the broadcast companies in which he held an interest were previously determined to be unqualified”.

Nevertheless, despite these admonitions, the Enforcement Bureau (“Bureau”) managed to turn this proceeding into a relitigation of Mr. Rice’s crimes, which occurred more than 28 year ago, and has paid scant attention to anything that happened in Mr. Rice’s life after he entered prison in September 1994. The Bureau achieved this dastardly result in two ways. First, it convinced the Presiding Judge to issue *Order*, FCC 15M-26, released August

4, 2015, which completely eviscerated Paragraph 27's holding in the HDO that the Judge should not allow relitigation of Mr. Rice's previous criminal convictions, under the guise of allowing the Bureau's psychologist, Dr. Kimberly Weitzl, to inquire into Mr. Rice's "mental state" prior to his imprisonment. And, second, the Judge eventually permitted the Bureau to include in the hearing record, over counsel's several objections, a number of 20-or-more-year-old untested written reports (Bureau Exhibit 4) concerning alleged sexual misconduct by Mr. Rice prior to his incarceration. These documents were allowed by the Judge to be quoted by the Bureau's witnesses, Dr. Weitzl and Ms. Tamara Gremminger, at hearing and in their direct case exhibits and were relied upon for the "truth" of their scurrilous statements about Mr. Rice, even though they were admitted into evidence only as "business records" of the Missouri Department of Corrections. LBI excepts to the *Order* and to the ALJ's admission into evidence of Bureau Exhibit 4.

Lake's direct case exhibits show that Mr. Rice's felony convictions have no continuing effect on his qualifications or the qualifications of LBI to be a licensee because Mr. Rice is fully rehabilitated from his past criminal activity, has a very low risk of re-offending, and is fully fit to become a Commission licensee again.

The ID does not conform to the requirements of Section 1.267 of the Commission's Rules, and the Commission should direct the ALJ to make further findings of fact and conclusions of law in this proceeding in traditional format and to issue a supplemental initial decision.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	) EB Docket No. 14-82
	)
<b>PATRICK SULLIVAN</b>	) FRN 0003749041, 0006119796,
(Assignor)	) 0006149843, 0017196064
	)
and	) Facility ID No. 146162
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<b>LAKE BROADCASTING, INC.</b>	) File No BALFT-20120523ABY
(Assignee)	)
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Application for Consent to Assignment of	)
License of FM Translator Station W238CE,	)
Montgomery, Alabama	)

To: Marlene H. Dortch, Secretary  
Attention: The Commission

**EXCEPTIONS AND BRIEF OF PATRICK SULLIVAN  
and LAKE BROADCASTING, INC.**

PATRICK SULLIVAN AND LAKE BROADCASTING, INC. ("LBI"), by their attorney and pursuant to Section 1.277 of the Commission's Rules, except to the Initial Decision ("ID"), FCC 19M-03, released May 30, 2019, of presiding Administrative Law Judge Jane Halprin ("ALJ") in this proceeding and request oral argument on the exceptions, brief, and ID herein.

**I. PRELIMINARY STATEMENT**

1. In this proceeding, Patrick Sullivan ("Sullivan") is the proposed assignor of FM Translator Station W238CE, Montgomery, Alabama, and Lake Broadcasting, Inc. ("Lake") is the proposed assignee (collectively, the "Applicants"). Mr. Michael S. Rice is the President,

sole owner, and director of Lake, and this proceeding focuses on him in his own right and as the embodiment of Lake.

2. Paragraph 11 of the *Hearing Designation Order* (“*HDO*”), DA 14-703, released May 23, 2014, establishes the “law of the case,” making it clear that the purpose of this proceeding is to determine whether Mr. Rice “has been sufficiently rehabilitated and, therefore, is qualified to hold the Station’s license”. The ALJ recognized this fact in Paragraph 5 of the ID. As part of this “law of the case,” the *HDO* (Para. 27) further states that “the Presiding Administrative Law Judge shall not...relitigate any of the findings of fact and/or conclusions of law contained in any order or opinion relating to the state court proceeding in which Michael S. Rice was determined to be a convicted felon or in any order or opinion relating to the Commission proceeding in which Michael S. Rice and/or the broadcast companies in which he held an interest were previously determined to be unqualified”.

3. Nevertheless, despite these admonitions, the Enforcement Bureau (“Bureau”) managed to turn this proceeding into a relitigation of Mr. Rice’s crimes, which occurred more than 28 year ago, when Mr. Rice was less than 50 years old, and has paid scant attention to anything that happened in Mr. Rice’s life after he entered prison in September 1994. The Bureau achieved this dastardly result in two ways. First, it convinced the Presiding Judge to issue *Order*, FCC 15M-26, released August 4, 2015, which completely eviscerated Paragraph 27’s holding in the *HDO* that the Judge should not allow relitigation of Mr. Rice’s previous criminal convictions, under the guise of allowing the Bureau’s psychologist, Dr. Kimberly Weitzl, to inquire into Mr. Rice’s “mental state” prior to his imprisonment. And, second, the Judge eventually permitted the Bureau to include in the hearing record, over counsel’s several

objections, a number of 20-or-more-year-old untested written reports (Bureau Exhibit 4) concerning alleged sexual misconduct by Mr. Rice prior to his incarceration. These documents were allowed by the Judge to be quoted by the Bureau's witnesses, Dr. Weitzl and Ms. Tamara Gremminger, at hearing and in their direct case exhibits and were relied upon for the "truth" of their scurrilous statements about Mr. Rice, even though they were admitted into evidence only as "business records" of the Missouri Department of Corrections. LBI excepts to the *Order*, FCC 15M-26 and to the ALJ's admission into evidence of Bureau Exhibit 4.

4. The Bureau's witness testimony by Dr. Weitzl and Ms. Gremminger and its documentary exhibits focus almost exclusively on Mr. Rice's life prior to his release from prison in December 1999. The avowed purpose of this testimony was to measure the degree of Mr. Rice's rehabilitation, but the testimony instead was inflammatory and concluded that Mr. Rice was not rehabilitated, and that he had a high risk of re-offending – even though he is 78 years old and has had a perfect record of civic behavior since he was arrested in 1990. Lake's direct case exhibits show that Mr. Rice's felony convictions have no continuing effect on his qualifications or the qualifications of Lake to be a licensee because Mr. Rice is fully rehabilitated from his past criminal activity, has a very low risk of re-offending, and is fully fit to become a Commission licensee again.

## **II. QUESTIONS OF LAW PRESENTED**

5. The foregoing observations present the following specific questions of law:

A. Did the ID err in failing to follow the "law of the case" in this proceeding by allowing the Enforcement Bureau to relitigate Mr.



Rice's prior criminal history and by failing to exclude Enforcement Bureau Exhibit 4 and allowing that Exhibit to attempt to undermine Mr. Rice's showings of rehabilitation and good character?

B. Did the ID err in concluding that LBI did not introduce any evidence to address the misrepresentation and lack of candor issue specified in the HDO?

C. Did the HDO err by including footnote 60, which raises the possibility of denying a license to someone accused of "egregious misconduct," even if the hearing record fully supports grant of a license?

D. Did the ID violate Section 1.267(b) of the Rules because it does not "contain findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record"?

### **III. ARGUMENT**

#### **A. The ID erred in failing to follow the "law of the case" in this proceeding and failing to exclude Bureau Exhibit 4**

6. Bureau's Findings 9-11 should be stricken because they are littered with "relitigation" and highly prejudicial hearsay statements contained in Bureau Exhibit 4. While technically admissible as "business records" of the Missouri Department of Corrections, the items in Bureau Exhibit 4 are actually untested scurrilous written police reports concerning alleged sexual misconduct by Mr. Rice

prior to his incarceration. As such they are highly prejudicial and should be excluded from this case. *See Paddack v. Christensen*, 745 F.2d 1254, 1262 (9<sup>th</sup> Cir. 1984); *U.S. v. Lundy*, 809 F.2d 392, 395 (7<sup>th</sup> Cir. 1987) (a court must insure that an expert witness is testifying as an expert and not merely as a conduit through which hearsay is brought before the jury). If there were any truth to these allegations, Mr. Rice would have been arrested based on them. But he was not arrested, because these charges are bogus and should be ignored. Dr. Weitzl's and Ms. Gremminger's testimony should also be ignored to the extent that they rely on such "business records". FCC administrative hearings are not required to follow all of the limitations and liberalities of the Federal rules of evidence where justice requires otherwise. This is a clear case where the documents in Bureau Exhibit 4 are highly prejudicial and violate the "law of the case" by relitigating part of Mr. Rice's pre-incarceration activities. The Commission should reject Bureau Exhibit 4 in toto as impermissible hearsay.

**B. The ID erred in concluding that LBI did not introduce any evidence to address the misrepresentation and lack of candor issue specified in the HDO**

7. Properly stated, the specified misrepresentation/candor issue in the HDO asks what effects Lake's previous misrepresentations and lack of candor have upon Lake's and Mr. Rice's qualifications to be a licensee, including truthfulness. In response, Lake supplied Exhibit 2 and Lake Findings 7 through 38.

8. Paragraph 21 of the *HDO* states that the principal reason for designating for hearing Lake's assignment application is to determine whether Mr. Rice "has been rehabilitated

to an extent that the Commission is confident Rice will refrain from engaging in the kind of behavior for which he was convicted [in a Missouri state criminal proceeding in 1994]; Rice and/or LBI [Lake] can be relied upon to be truthful, candid, and forthcoming in their dealings with the Commission; and Rice and/or LBI will comply in all other respects with the Commission's Rules, regulations, and policies". In the cited Findings and Exhibit 2, the Applicants fully demonstrate that Mr. Rice has been fully rehabilitated and can be relied upon to be truthful with the Commission. The evidentiary task is harder as to Lake, because while it remains in good standing as a Missouri corporation, it has not operated any broadcast facility since October 3, 2001. However, Lake receives tower rentals from lessees on towers owned by Lake, and it also files annual registration reports with the Missouri Secretary of State. Lake Exh. 2, App. B (Lake's Feb. 21, 2017 Annual Registration Report). These are the only possible ways for it to demonstrate that it has taken steps to rehabilitate itself from the adverse findings and conclusions in the previous Commission and state court proceedings. In sum, Mr. Rice is the physical embodiment of Lake, as its President, sole director and 100% owner, and he has been fully rehabilitated. Lake was previously disqualified independently of Mr. Rice, and Mr. Rice was not held accountable for Lake's misconduct. Both Lake and Mr. Rice are now fully qualified to be Commission licensees.

**C. The HDO erred by including footnote 60, which raises the possibility of denying a license to someone accused of "egregious misconduct," even if the hearing record fully supports grant of a license**

9. Footnote 60 of the *HDO*, *supra*, allows the Presiding Judge to consider whether "crimes involving child sex abuse are so egregious, so utterly shocking to the conscience, and so patently inconsistent with the public interest, that a person so convicted, regardless of when the conviction took place, may be determined to be qualified to be a Commission licensee only in the

most extraordinary and compelling of circumstances” (emphasis added). Lake submits that Rice’s and Lake’s rehabilitation based on the evidence in this proceeding meets the footnote 60 test of “extraordinary and compelling circumstances” warranting grant of the pending application, given the age of the applicant party Michael Rice (78 years old), Mr. Rice’s unblemished record as a model citizen and member of his community since he was released from prison in 1999, and the fact that he is fully rehabilitated from past wrongdoing and can be relied upon to be truthful, candid, and forthcoming in his dealings with the Commission.

10. Thus, while footnote 36 of the ID states that the Judge is not reaching a conclusion on this issue, LBI submits that it would be an egregious error going forward for the ALJ to use footnote 60 to deny grant of the pending application. Moreover, applying footnote 60 against Mr. Rice and Lake at the end of this 4-year proceeding would turn this proceeding into a farce. The Commission was fully aware of Mr. Rice’s crimes at the time that the *HDO* was released, and the ID and final Commission *Memorandum Opinion and Order* in the previous proceeding both referred to Mr. Rice’s misconduct as “egregious”. So it would be completely hypocritical for the Commission to designate this case for hearing in 2014 and then conclude in 2019 that Mr. Rice and Lake are fully rehabilitated but cannot obtain a license because of “egregious” misconduct which was labelled as such in 1997 and 1998. In other words, why designate an application for hearing if you already know that you will deny a grant to the applicant because of his previous “egregious” misconduct? Under these circumstances, LBI urges that the Commission should strike footnote 60 from the HDO and prohibit the ALJ from making any findings or conclusions on the subject of “egregious misconduct”.

**D. The ID violated Section 1.267(b) of the Rules because it does not “contain findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record.**

11. The ID is written in an unconventional way in several important respects:

- It is entitled “Initial Decision,” but it is given the identification number – FCC 19M-03 – of a Memorandum Opinion and Order.
- It states in Para. 10 “In light of the foregoing findings of fact and conclusions of law....” but there are no foregoing findings and conclusions, just the ALJ’s pronouncements – which are NOT “findings of fact and conclusions of law”.
- Paras. 8 and 9 of the ID contain the ALJ’s personal views about Mr. Rice’s unsuccessful attempt to terminate this proceeding by LBI withdrawing its application prior to release of an ID. Of course, LBI’s request to withdraw was denied, and LBI subsequently filed Proposed Findings and Reply Findings in this proceeding. Thus, in the final analysis, Mr. Rice’s attempt at an “eleventh-hour abandonment of the hearing” (ID, para. 9) was thwarted, and the ALJ’s musings about abuse of process and disrespect for the forum are exaggerated and incorrect.

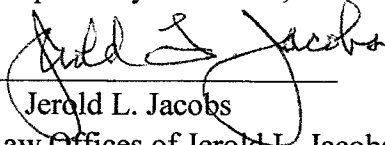
Under these circumstances, and pursuant to Section 1.276(c)(4) and (5) of the Rules, the Commission should direct the ALJ to make further findings of fact and conclusions of law in this proceeding in traditional format and to issue a supplemental Initial Decision.

#### IV. ULTIMATE CONCLUSION

12. The Applicants have fully met their burdens of proceeding with the introduction of evidence and of proof with respect to all designated issues in this proceeding. Hence, the Commission should grant the subject Assignment Application or direct the presiding ALJ to issue a supplemental Initial Decision doing so. In support of these Exceptions, the Applicants have attached a Declaration of Michael S. Rice.

WHEREFORE, in light of the foregoing, the Applicants respectfully urge that Mr. Michael Rice is fully rehabilitated, that he and Lake Broadcasting, Inc. are fully qualified to be a Commission licensee, and that the captioned assignment application should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Jerold L. Jacobs  
Law Offices of Jerold L. Jacobs  
1629 K Street, N.W. Suite 300  
Washington, DC 20006  
(202) 508-3383

Counsel for Patrick Sullivan and  
Lake Broadcasting, Inc.

Dated: July 1, 2019

## DECLARATION OF MICHAEL S. RICE

1, Michael S. Rice, declare, under penalty of perjury, as follows:

1. I am currently President of three broadcast related companies owned by myself. Contemporary Media, Inc. ("CMI"), Lake Broadcasting Inc. ("LBI") and Contemporary Broadcasting, Inc. ("CBI")
2. On May 30, 2019, an Initial Decisions was issued by ALJ Jane Halprin , that stated in her narrative that I had "the ultimate responsibility and duty to ensure that the Licensees' submission to the Commission were complete, accurate and truthful." .... "However there is no record evidence that RICE made any attempt whatsoever to live up to HIS obligations in this regard."
3. Over the years since that revocation, a false narrative has been printed and quoted many times by the FCC that it was RICE who made misrepresentations to the Commission. This is patently false, and has been the source of embarrassment and misunderstandings by persons who know me. This is now repeated in the Initial Decision in Paragraph 7.
4. I did not participate in the revocation hearing, and was not present when the hearing was held in Washington DC in 1997, some 22 years ago, because I was in prison from 1994 until 1999. All decisions were made by legal counsel, at that time the law firm of Roseman & Colin. I did not have any discussions with those attorneys during that time of my imprisonment and my recusal from the affairs of the above corporations. All FCC material was written and filed at the FCC by that law firm and approved for the corporations by Vice President Janet Cox.
5. As explained in Paragraph 4 above, I did not make any FCC filings in regard to the hearing and left the statements to the FCC up to the lawyers at Rosenman & Colin.
6. My actual reason for trying to end the proceeding on the last day of hearing was that the seller had another offer to buy the translator and had told me that he did not want to hold onto the application for the inordinate months and years after the assignment application was filed.
7. At the hearing, the ALJ and EB did not follow the Hearing Designation Order in this case concerning what rehabilitation evidence was to be considered, and that the time frame for the evidence was to start after my release from incarceration in December 1999. I have had no arrests or accusations of wrongdoing against me since 1991.

  
Michael S. Rice

Dated: June 28, 2019

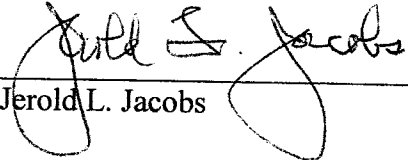
**CERTIFICATE OF SERVICE**

I, Jerold L. Jacobs, hereby certify that on this 1st day of July, 2019, I filed the foregoing "PATRICK SULLIVAN and LAKE BROADCASTING, INC. EXCEPTIONS AND BRIEF" in ECFS and by hand to the Secretary of the Commission and have caused a copy to be sent via e-mail to the following:

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Federal Communications Commission  
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\_\_\_\_\_  
Jerold L. Jacobs